



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

APR 6 2010

Re: **Building of Trade and Commerce, 1323 Broadway St., Superior, Wisconsin**
Project Number: **23532**

Dear

My review of your appeal of the decision of Technical Preservation Services (TPS), National Park Service, denying certification of the rehabilitation of the property cited above is concluded. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you for speaking with me via conference call on October 8, 2009, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the additional materials submitted after our meeting, I have determined that the rehabilitation of the windows of the Building of Trade and Commerce is consistent with the historic character of the property and that the project meets the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued by TPS on June 25, 2009, and reiterated on July 16, 2009, is hereby reversed.

Built in 1890, the Building of Trade and Commerce was listed in the National Register of Historic Places on May 8, 1979, in recognition of its significance in architecture and commerce. TSP denied certification of the rehabilitation of this "certified historic structure" on the grounds that the application lacked sufficient information to permit it to evaluate all the work that had been undertaken on the building. In addition to the general lack of information, TPS also cited two specific matters leading to its decision: the installation of new windows to replace the historic ones existing prior to rehabilitation, and previous demolition work undertaken on the interior.

The TPS decisions offered to review any additional information you wished to supply, but also explained the appeals process in the event that you considered the matter to be at an impasse. Subsequently, you appealed the TPS decision to me and supplied a great deal of additional information, including photographs, newspaper articles, floor plans, written descriptions, and a detailed time line of work items undertaken on the building over the years. This information is quite voluminous and remedies the deficiencies in the file that was available to TPS. More importantly, it is sufficient to permit me to conclude that the rehabilitation "project" for which you seek approval does not contravene the Secretary of the Interior's Standards for Rehabilitation.

With regard to the window replacement, the photographs you submitted show clearly that the few historic windows still extant in the building had deteriorated beyond repair. Furthermore,

photographs of the new windows installed show that they adequately reproduce the visual appearance of the historic windows being replaced. Accordingly, this element of the rehabilitation satisfies the requirements of Standard 6, which governs replacement of historic features: *"Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence."*

With regard to the interior demolition on the third, fourth, and fifth floors, I agree with TPS that this work would ordinarily cause a rehabilitation project not to meet the Standards for Rehabilitation. Although the removal of historic partitions in general is cause for concern, the removal of walls defining the principal circulation pattern is particularly serious; in this case, the walls creating a "lobby" on each landing of the staircase were demolished. In other circumstances, this treatment would cause the project to fall short of Standard 2, which states: *"The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."*

However, the material you submitted in the months following our conversation—especially the very detailed time line—demonstrates to my satisfaction that this work on the upper floors was completed long enough ago that it should not be considered part of the current "rehabilitation project" for which certification is sought. You have owned the building for over 25 years, and have worked on it periodically as funds and opportunity have permitted. Department of the Interior regulations governing the tax incentives program state that, "In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners or third parties." (36 CFR § 67.6(b)(1)). Given the totality of the circumstances in this case, I am satisfied that the work discussed in the preceding paragraph does not constitute part of the current rehabilitation.

Finally, I would note that this entire matter could have been avoided if the initial application to TPS had documented the structure's existing condition at the commencement of this project and the work undertaken on it. It is the experience of the National Park Service that the review of rehabilitations of structures like the Building of Trade and Commerce can proceed expeditiously for the owner, the State Historic Preservation Office, and the National Park Service alike when owners apply before starting work and when applications furnish adequate documentation from the outset. It is indeed fortuitous that I could reach a positive determination in your favor in this case.

Although I am reversing the TPS's denial of certification, the project will not become a certified rehabilitation eligible for the tax incentives until it is completed and so designated. Further, our regulations provide that final action cannot be taken on any application until the requisite fee for processing rehabilitation requests has been paid. Please fill out the enclosed Request for Certification of Completed Work and submit it to TPS through the Wisconsin Historical Society. Should you have any questions concerning procedures for final certification, please contact

As Department of the Interior regulations state, my decision is the final administrative decision regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or

interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Burns', with a long horizontal flourish extending to the right.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

Enclosure

cc: SHPO-WI
IRS